

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A23-1162**

In the Matter of the Welfare of the Child of:  
C.R.H. and S.M.-P.H.,  
Commissioner of Human Services, Legal Custodian.

**Filed January 22, 2024  
Reversed and remanded  
Halbrooks, Judge\***

Rice County District Court  
File No. 66-JV-19-1296

A. Michael Kuehn, Third District Public Defender, Winona, Minnesota; and

Cresston Gackle, Special Assistant Public Defender, Cresston Law LLC, Minneapolis,  
Minnesota (for appellant L.H.)

Brian M. Mortenson, Rice County Attorney, Sean R. McCarthy, Assistant County  
Attorney, Faribault, Minnesota (for respondent Rice County Social Services)

Thomas Nolan, Jr., Nolan Law Offices, Minneapolis, Minnesota (for guardian ad litem)

Considered and decided by Cochran, Presiding Judge; Slieter, Judge; and  
Halbrooks, Judge.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## NONPRECEDENTIAL OPINION

**HALBROOKS**, Judge

Appellant, the adult sister of a child to whom the district court terminated parental rights, challenges both the district court's denial of her request for court-ordered sibling visitation with the child and the discharge of her court-appointed counsel. Because the district court made these decisions based on its misapprehension that the matter before it was an adoption matter rather than a juvenile-protection matter, we reverse and remand to the district court to reconsider the challenged rulings.

### FACTS

In 2019, respondent Rice County Social Services petitioned to terminate the parental rights to the child. When appellant, the now-adult sister of that child, reached age 18, she moved through her appointed counsel to become a party to the proceeding. The district court granted sister's motion. *See* Minn. R. Juv. Prot. P. 32.01, subd. 1(g) (allowing the district court to include as a party to a juvenile protection matter any person the district court deems important to resolving that matter in the best interests of the child).

Sister then sought visitation with the child. Initially there were difficulties in sister's communication with others and in identifying a visitation schedule. The visitations that did occur were positive for the child, and the district court encouraged continued visitation.

In April 2023, parents executed agreements consenting to the voluntary termination of their parental rights, appointment of a guardian, and adoption of the child without further consent or notice. Also, parents—but not sister—entered agreements allowing them to have some continued contact with the child. The district court then terminated parents'

parental rights, transferred guardianship of the child to the commissioner of human services, retained jurisdiction over the case “until an adoption decree is entered,” and noted that review would occur “pursuant to statute.”

In June, the parties appeared for a post-permanency progress-review hearing. At that hearing, sister asked the district court to “reiterate” a prior order regarding her visitation with the child. The county opposed the request, noting that it was working to set up visitation. The county then questioned whether sister’s appointed counsel should continue representing sister given the stage of the proceedings. The district court stated that the court was “very clear” that, when it terminated parents’ parental rights, sister had no agreement that allowed sister to have continued contact with the child. The district court also noted that sister’s choice to not have an agreement was made on the record and with assistance of counsel. The district court then declined to file a visitation order but encouraged the parties to continue the relationship between sister and the child, and to “mend” the relationship between sister and the foster parent. Before ending the hearing, the district court stated that it believed it was proper to discharge sister’s appointed counsel and suggested that sister’s counsel file an explanation as to why they should not be discharged.

Sister’s counsel subsequently filed a letter with the district court, seeking to remain as counsel for sister and arguing that the district court had authority to order sibling visitation. The county then requested a hearing, and the guardian ad litem’s (GAL’s) counsel argued that the Minnesota Rules of Adoption Procedure now governed the matter.

Sister's counsel replied, asserting that the matter was a juvenile-protection matter and not an adoption matter.

In July, the parties appeared before the district court to address whether sister's counsel should be discharged. The district court heard arguments from the county, the GAL, and sister's counsel focusing on whether the matter remained a juvenile-protection matter or was now an adoption matter. The county and sister also made arguments regarding sister's requested visitation. The district court expressly declined to address sibling visitation during the hearing, but encouraged the parties to continue communicating and focusing on what was best for the child.

After the July hearing, the district court filed two orders. Neither order addressed sibling visitation, and one ruled that the matter was now an adoption matter, and therefore the Minnesota Rules of Adoption Procedure applied. The district court also ruled that, because the juvenile protection matter was complete, it was appropriate to discharge sister's appointed counsel under Minn. R. Juv. Prot. P. 36.05.

This appeal follows.<sup>1</sup>

## **DECISION**

Sister argues that the district court abused its discretion in determining that it lacked authority to order sibling visitation and in discharging her counsel—two decisions that the district court made with the understanding that the nature of the matter before the court had changed from a juvenile-protection matter to an adoption matter. Because the matter

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<sup>1</sup> Sister simultaneously petitioned this court for a writ of mandamus. This court dismissed the petition.

remained a juvenile-protection matter at the time of the rulings at issue on appeal, we agree with sister.

We review a district court's decision regarding visitation and discharge of counsel for an abuse of discretion. *See In re Welfare of Child of A.H.*, 879 N.W.2d 1, 7 (Minn. App. 2016) (concluding that the district court did not abuse its discretion by limiting visitation time); *In re Welfare of Child. of M.L.A.*, 730 N.W.2d 54, 62 (Minn. App. 2007) ("We conclude that the district court abused its discretion by discharging mother's appointed counsel, without cause, before the conclusion of the action in district court."). "A district court abuses its discretion if it makes findings unsupported by the evidence or when it improperly applies the law." *In re Welfare of Child. of M.A.H.*, 839 N.W.2d 730, 740 (Minn. App. 2013) (quotation omitted).

The district court ruled that it made the challenged rulings as the result of post-permanency progress-review hearings under Minn. Stat. § 260C.607 (2022). Following a termination of parental rights and transfer of guardianship of the child at issue to the commissioner of human services, "the court must review the matter at least every 90 days under section 260C.317." Minn. Stat. § 260C.515, subd. 3(4) (2022). Under Minn. Stat. § 260.317, subd. 3(c) (2022), "[a]n in-court appearance hearing must be held every 90 days following termination of parental rights for the court to review progress toward an adoptive placement" and those hearings "shall be conducted according to section 260C.607." Thus, the district court correctly ruled that the June hearing was conducted according to Minn. Stat. § 260C.607.

The district court then concluded that because the June post-permanency progress-review hearing was conducted under Minn. Stat. § 260C.607, the matter before it had changed from a juvenile-protection matter to an adoption matter, and was governed by the Minnesota Rules of Adoption Procedure, rather than the Minnesota Rules of Juvenile Protection Procedure. We disagree.

Treating the matter as a juvenile-protection matter, rather than an adoption matter, is required by the supreme court's recent order amending both the juvenile-protection rules and the adoption rules to "clarify" that review hearings under Minnesota Statutes section 260C.607 are juvenile-protection matters. *Order Promulgating Amendments to the Minnesota Rules of Juvenile Protection and Adoption Procedure* (Amending Order), No. ADM10-8041 (Minn. Sept. 25, 2023) (amending the juvenile-protection rules and the adoption rules). The amended version of Minn. R. Juv. Prot. P. 2.01(19) defines "[j]uvenile protection matter" to include "progress toward adoption hearings as defined in Minnesota Statutes, section 260C.607[,]" Minn. R. Juv. Prot. P. 2.01(19)(g), while the amended version of Minn. R. Adopt. P. 2.01(4), defining "[a]doption matter[,]" states that "[p]rogress toward adoption hearings, as defined in Minnesota Statutes, section 260C.607, are juvenile-protection matters and fall under the scope of the Rules of Juvenile Protection Procedure." Further, the supreme court's order promulgating the amendments to these rules states: "The amendments are effective as of January 1, 2024, and shall apply to all cases pending on, or filed on or after, the effective date." Amending Order at 5. The child's case is currently pending in both the district court and this court and is covered by the amendment. Therefore, the proceedings in district court under Minn. Stat. § 260C.607

were part of the child’s juvenile-protection matter rather than an adoption matter, and we must conclude that the district court erred in treating the proceedings under Minn. Stat. § 260C.607 as part of an adoption matter.<sup>2</sup>

Our conclusion is also consistent with two additional facts. First, adoption rule 17.02 and the 2014 comment to that rule each indicate that proceedings under Minn. Stat. § 260C.607 are—and have been—juvenile protection matters. Adoption rule 17.02 states that, generally, the rules of civil procedure govern discovery in “adoption matters” but that “discovery for a contested adoptive placement under Minnesota Statutes, section 260C.607 is governed by the Rule 17 of the Rules of Juvenile Protection Procedure.” Relatedly, the comment to adoption rule 17.02 explains that applying the Minnesota Rules of Juvenile Protection Procedure to motions challenging adoptive placement decisions under Minn. Stat. § 260C.607 “continues the Rules of Juvenile Protection Procedure in effect until an adoption petition is filed[,]” and that doing so “is a bright line that helps avoid confusion about which rules or parts of rules (the Juvenile Protection Rules or Adoption Rules) apply to proceedings up to the point an adoption petition is filed.” Minn. R. Adopt. P. 17 2014 advisory comm. cmt. Second, here, when the district court made the rulings being challenged in this appeal, the county had not made an adoptive placement of the child pursuant to Minn. Stat. § 260C.613 (2022), and no adoption petition had been filed pursuant to Minn. Stat. § 260C.623 (2022).

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<sup>2</sup> We note that because the supreme court filed its order “clarify[ing]” the definitions of “juvenile protection matter” and “adoption matter” after sister took this appeal, the district court did not have the benefit of that order when it made its rulings. Amending Order at 3.

Finally, we note that, because the district court did not specifically address visitation between sister and the child, it is not clear whether the district court believed that it lacked authority to order sibling visitation—as asserted by sister—or was simply declining to award visitation when it made the rulings sister appeals. Regardless, we take this opportunity to explain that it is within the district court’s authority to order sibling visitation during post-permanency proceedings conducted under Minn. Stat. § 260C.607. Specifically, Minn. Stat. § 260C.607, subd. 4(a)(2)(ii), provides that, as part of post-permanency progress reviews, a district court “shall” review several aspects of the child’s out-of-home placement plan “to ensure the child is receiving all services and supports required to meet the child’s needs,” including “visitation and contact with siblings.” The child’s out-of-home placement plan is made pursuant to Minn. Stat. § 260C.212, subd. 1 (2022), which expressly permits a district court to modify an out-of-home placement plan. And we emphasize that whether to order sibling visitation should be determined based on the best interests of *the child*. Minn. Stat. § 260C.212, subd. 1(c)(5) (2022).

The district court made its rulings based on the misapprehension that the matter was an adoption matter governed by the adoption rules, rather than a juvenile-protection matter governed by the juvenile-protection rules. Therefore, its decisions on these matters constituted an abuse of discretion because the decisions were based on an improper application of the law. *M.A.H.*, 839 N.W.2d at 740. As a result, we reverse and remand for reconsideration of sibling-visitation and discharge-of-counsel questions with the understanding that, at the time of the challenged rulings, the matter was a juvenile-protection matter and that the Minnesota Rules of Juvenile Protection Procedure applied.



Nothing in this opinion shall be construed as an expression of this court's view of how to resolve the remanded questions. And nothing in this opinion shall be construed to preclude the district court from reopening the record if, in its discretion, it believes it appropriate to do so.

**Reversed and remanded.**